In the United States Bankruptcy Court
for the
Southern District of Georgia
Waycross Division

In the matter of:

WILLIAM STEPHEN BOWEN, JR.

Debtor

Chapter 11 Case

Number 92-50010

ORDER ON FIRST APPLICATION FOR INTERIM COMPENSATION BY JAMES C. MARSHALL

At the hearing to consider James C. Marshall's ("Applicant") Application for Interim Compensation the court raised the issue whether the lodestar rate utilized in calculating the fee award to Professor Marshall should be set based upon market rates in the relevant community or should follow a cost-based standard. Professor Marshall was directed to supply to the court whatever authority he might be able to locate which would be relevant to this matter of first impression in this court. By letter dated September 22, 1992, he complied with this request and I have reviewed the authorities on which he relies. Because I find the cases to be persuasive and because no contradictory authority has been presented, I conclude that Professor Marshall's fee should be awarded based on the prevailing market rate. That rate, as previously established by many decisions in this court for attorneys in the Middle and

Southern Districts of Georgia, for similar services rendered by attorneys of reasonably comparable skill, experience, and reputation is $125.00 per hour.

In Blum v. Stenson, 104 S.Ct. 1541 (1984), the argument was made that, because the plaintiffs had been represented by attorneys from the Legal Aid Society of New York, a private non-profit law office, awarding the market rate for attorneys in private practice would represent an impermissible windfall. The court examined the legislative history of the fee-shifting statute in question and rejected the argument that a cost related standard should apply. The court stated:

> It is clear from the legislative history that Congress did not intend the calculation of fee awards to vary depending on whether plaintiff was represented by private counsel or by a non-profit legal services organization . . . .
>
> In determining the amount of fees to be awarded, it is not legally relevant that plaintiffs counsel are employed by a privately funded, non-profit, public interest law firm. It is in the interest of the public that such law firms be awarded reasonable attorneys' fees to be computed in the traditional manner when its counsel performed legal services otherwise entitling them to the award of attorneys' fees.

Id. at 1547. Although Blum was a civil rights case and not a bankruptcy decision,

Bankruptcy Courts' rulings on the appropriate standard for attorneys' fee awards have consistently relied on existing precedent in the civil rights area and I have no basis for distinguishing Blum.

I am further persuaded that the holding of Coulter v. State of Tennessee, 805 F.2d 146 (6th Cir. 1986), supports Professor Marshall's application. In that case a university law professor was associated by counsel to prosecute a civil rights action. The professor's hourly fee request was reduced by the District Court specifically because the court found that the prevailing market rate for attorneys in Nashville, Tennessee, the relevant community, were lower than the amount sought by the applicant. The Sixth Circuit noted, without criticizing the result, that in an earlier case the professor had been awarded a fee based on the prevailing market rate despite the argument that the fee should be lower because he was a law professor whose overhead was lower than that of the typical attorney practicing in Nashville. The Sixth Circuit quoted with apparent approval from the District Judge's order in that earlier case that:

> One of the underlying factors in setting the rate may be overhead, but to the recipient thereof the components have no pertinency. The plaintiff is entitled to recover fees based on their reasonable worth, i.e., market value.

Id. at 150. While the Sixth Circuit did not specifically review this aspect of the trial court's rationale in passing on the subsequent fee application, it was clearly untroubled by the fact that a law professor was being compensated at a prevailing market rate and did not suggest that a cost-based standard should be imposed. Accordingly, I conclude that for purposes of this interim application the prevailing market rate of $125.00 is applicable. This ruling does not preclude any party in interest from citing contrary authority upon any subsequent interim or final application.

In accordance with the foregoing, IT IS HEREBY ORDERED that the applicant is awarded $11,662.50 as interim compensation for services rendered and is hereby awarded reimbursement for expenses advanced in the amount of $160.00.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 30th day of October, 1992.